

Amendment No. 1 to SB1954

Stanley
Signature of Sponsor

AMEND Senate Bill No. 1954*

House Bill No. 1698

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Market Regulation Act of 2009".

SECTION 2. Tennessee Code Annotated, Section 65-5-109, is amended to add new subsections (l) – (r) as follows:

(l) Any non-incumbent certificated provider of local exchange telephone or intra-state long distance telephone service or any incumbent certificated provider of local exchange or intra-state long distance telephone service that has elected price regulation pursuant to subsections (a) through (k) may, in its sole discretion, elect to operate pursuant to market regulation, by filing notice of its intent to do so with the authority, which shall be effective immediately upon filing.

(m) Upon election of market regulation by a certificated provider, the provider shall be exempt from all authority jurisdiction, including but not limited to state-based regulation of retail pricing or retail operations, except as defined in subsection (n). Notwithstanding the limitations on authority jurisdiction over market-regulated companies under state law as set forth herein, it is the express intent of the general assembly that the Tennessee regulatory authority is authorized as a matter of state law to receive any jurisdiction delegated to it by the federal 1996 Telecommunications Act or Federal Communications Commission ("FCC") orders or rules, including, without limitation, jurisdiction granted to hear complaints regarding anti-competitive practices, to set rates, terms, and conditions for access to unbundled network elements and to arbitrate

and enforce interconnection agreements. The authority shall continue to serve in its role as a dispute resolution forum for complaints between certificated carriers, provided however that such complaints must be resolved pursuant to federal, and not state law. No complaint may be brought to the Tennessee regulatory authority on a matter as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the authority within one hundred eighty (180) days of the filing of such complaint.

(n) A certificated provider electing market regulation shall be subject to the jurisdiction of the authority only when:

(i) The authority is exercising its jurisdiction as described in subsection (m) of this section;

(ii) The authority is acting with respect to enforcement or modification of any wholesale Self Effectuating Enforcement Mechanism Plan in place as of January 1, 2009, provided such actions are consistent with federal telecommunications law;

(iii) The authority is assessing and collecting inspection fees calculated in accordance with § 65-4-301 *et seq.*, and election of market regulation shall not alter the character of any intrastate revenue, or remove any source of intrastate revenue formerly included within gross receipts and used for purposes of assessment of such fees;

(iv) The authority is exercising jurisdiction over video franchises pursuant to § 7-59-306;

(v) The authority is exercising jurisdiction respecting underground facilities damage prevention;

(vi) The authority is exercising jurisdiction respecting the Tennessee Relay Service Center or the Tennessee Devices Access Program pursuant to § 65-21-115;

(vii) The authority is exercising jurisdiction respecting the Life Line or Link Up programs consistent with FCC rules including, but not limited to, 47 CFR 54.403(a)(3) as amended from time to time and relevant Tennessee Public Service Commission orders on file with the authority as of January 1, 2009;

(viii) The authority is exercising jurisdiction respecting the Small and Minority-Owned Business Participation Plan pursuant to § 65-5-112;

(ix) The authority is responding to a specific customer complaint regarding residential telecommunications service from the provider. In such cases, the authority may mediate a customer dispute in order to achieve a mutually acceptable resolution but may not issue orders or impose fines relating to such complaints. In the event no mutually acceptable resolution can be reached, the authority may, but shall not be required to, require the provider to award the complaining customer a service credit, which shall not exceed the amount of the price of the stand-alone residential flat rate service offered by the provider in the complaining customer's applicable rate group. In no event shall the authority award any service credits if the provider has complied with the applicable terms and conditions governing the customer's service;

(x) The authority is exercising jurisdiction respecting Universal Service Funding pursuant to § 65-5-107; or

(xi) The authority is exercising jurisdiction respecting intrastate switched access service.

(o) Incumbent local exchange providers that have elected market regulation shall not be entitled to the limitation on authority jurisdiction in subsection (n) with respect to those residential local exchange telecommunications services that are offered in exchanges with less than three thousand (3,000) access lines or, for carriers who serve more than one million

(1,000,000) access lines in Tennessee, those exchanges with access line counts and calling areas that would result in classification as rate group 1 or 2 under AT&T's tariff in effect on January 1, 2009, and that are offered as single, individually-priced services at a rate-group specific price rather than a state-wide price, except as follows:

(i) Upon petition by a market regulated provider, the authority may order that such services shall be subject to the limitations on jurisdiction in subsection (n) by showing that each exchange has at least two (2) non-affiliated telecommunications providers that offer service to customers in each zone rate area of each exchange or the provider has lost twenty percent (20%) of its residential access line count in each exchange in the preceding five (5) years.

(ii) When counting the number of providers for the purpose of evaluating the competition standard in subsection (o)(i), cable television providers that offer telephone and broadband services to residential customers may be included. Non-affiliated providers of wireless service may be included in the count of providers but shall only count as one (1) provider regardless of the number of wireless providers. Non-affiliated providers of Voice over Internet Protocol service shall not be counted for the purpose of evaluating the competitive exemption for residential service unless the carrier seeking exemption offers a data service capable of supporting Voice over Internet Protocol service and does not require the purchase of voice telephony products to buy the data service. At least one (1) provider must be facilities-based and currently serving residential customers.

(iii) When the petitioning party shows facts satisfying the competition standard set forth in subsection (o)(i), the petitioner shall be

entitled to a rebuttable presumption that the competition standard established in this act is satisfied.

(iv) Such petition shall be subject to an accelerated schedule. The authority must issue its decision on the petition, including its reasons, within ninety (90) days of the filing of the petition.

(v) Unregulated providers of service shall not be required to participate in the authority's docket considering the petition, but, to the extent such competitors intervene, they shall be required to provide discovery responses regarding the activities of the unregulated provider in such rate groups. To the extent the petitioner seeks but is unable to obtain discovery response from intermodal or unregulated providers regarding the competition present in such rate groups, the petitioner shall be entitled to a rebuttable presumption that the unregulated provider is offering service in the area that is the subject of the petition.

(vi) Whether or not such a petition is filed or granted, the limitations on authority jurisdiction set forth in subsection (n) shall automatically become applicable to all services of a market regulated provider offered in rate groups 1 and 2 as of January 1, 2015.

(p) Notwithstanding the provisions of this act, providers that elect market regulation shall remain subject to the Tennessee Consumer Protection Act compiled in title 47, chapter 18.

(q) Each year the authority shall prepare and submit to the general assembly a report describing the competitive nature of the communications market in Tennessee.

(i) The report shall, at a minimum, contain the following information:

(A) The number of telecommunications providers including the technology used to provide service;

(B) The number of providers by county serving residential subscribers;

(C) The number of providers by county serving business subscribers; and

(D) The number of customers by customer type.

(ii) In preparing the report the authority shall rely on information filed with the authority or available as public information. The authority shall invite all providers of telecommunications services, including companies operating under market regulation, price cap regulation pursuant to § 65-5-109, rate of return regulation, competitive carriers, wireless carriers, carriers offering Voice over Internet Protocol service, cable operators, or other carriers known to provide such service in Tennessee, to provide voluntary reports supplying information relating to the items in subsection (q)(i) and relating to the services and products offered in Tennessee and any other information the provider volunteers concerning future plans for deployment, new services, new technology, or the scope of competition.

(r) In the event that a carrier has elected market regulation and later chooses to exit the business of providing local exchange telephone service in an exchange by selling all of its network in such exchange to another entity, then the following shall apply:

(i) If the purchasing entity is a certificated carrier of local exchange telephone service in Tennessee, then no regulatory requirements shall apply, except that nothing in this section shall preclude the exercise of authority jurisdiction as set forth in subsection (m).

(ii) Any purchasing entity that applies for a certificate in connection with a sale of the type described in this section, shall be subject to no greater standards than those applied by the authority for other entities

seeking certification pursuant to § 65-4-201, and an authority order granting or denying the certificate, including appropriate findings of fact and conclusions of law, shall be entered no later than thirty (30) days from the filing of the application.

SECTION 3. This act shall take effect upon becoming law, the public welfare requiring it.